

SPANISH-AMERICAN CLAIMS COMMISSION

Exchange of notes at Madrid February 11 and 12, 1871

Entered into force February 12, 1871

*Supplemented by agreements of February 23, 1881,¹ and May 6 and
December 14, 1882²*

Terminated by protocol of June 2, 1883³

17 Stat. 839; Treaty Series 328-1

The American Minister to the Minister of State

LEGATION OF THE UNITED STATES

MADRID, February 11, 1871

SIR:

I have had the honor to receive the note of today's date addressed to me by Your Excellency, proposing certain modifications of the plan of arrangement submitted to you on the 7th instant for the adjustment of the reclamations made by my government against that of Spain. I take much pleasure in stating that the changes suggested in the memorandum enclosed in your note have my entire concurrence, and have been duly embodied in the following record of the bases upon which we have agreed:

Memorandum of an arbitration for the settlement of the claims of citizens of the United States, or of their heirs, against the Government of Spain for wrongs and injuries committed against their persons and property, or against the persons and property of citizens of whom the said heirs are the legal representatives, by the authorities of Spain in the Island of Cuba or within the maritime jurisdiction thereof, since the commencement of the present insurrection;

1. It is agreed that all such claims shall be submitted to Arbitrators, one to be appointed by the Secretary of State of the United States, another by the Envoy Extraordinary and Minister Plenipotentiary of Spain at Washington, and these two to name an Umpire who shall decide all questions upon which they shall be unable to agree; and in case the place of either Arbitrator

¹ TS 331-1, *post*, p. 557.

² TS 332, *post*, p. 560.

³ TS 335, *post*, p. 569.

or of the Umpire shall from any cause become vacant, such vacancy shall be filled forthwith in the manner herein provided for the original appointment.

2. The Arbitrators and Umpire so named shall meet at Washington within one month from the date of their appointment and shall, before proceeding to business, make and subscribe a solemn declaration that they will impartially hear and determine, to the best of their judgment and according to public law, and the Treaties in force between the two countries, and these present stipulations, all such claims as shall, in conformity with this agreement, be laid before them on the part of the Government of the United States; and such declaration shall be entered upon the record of their proceedings.

3. Each government may name an advocate to appear before the Arbitrators or the Umpire, to represent the interests of the parties respectively.

4. The Arbitrators shall have full power, subject to these stipulations, and it shall be their duty before proceeding with the hearing and decision of any case, to make and publish convenient rules prescribing the time and manner of the presentation of claims and of the proof thereof; and any disagreement with reference to the said rules of proceeding shall be decided by the Umpire. It is understood that a reasonable period shall be allowed for the presentation of the proofs; that all claims and the testimony in favor of them shall be presented only through the Government of the United States; that the award made in each case shall be in writing and, if indemnity be given, the sum to be paid shall be expressed in the gold coin of the United States.

5. The Arbitrators shall have jurisdiction of all claims presented to them by the Government of the United States for injuries done to citizens of the United States by the authorities of Spain in Cuba since the first day of October, 1808. Adjudications of the tribunals in Cuba, concerning citizens of the United States, made in the absence of the parties interested, or in violation of international law, or of the guarantees and forms provided for in the Treaty of October 27th, 1795,⁴ between the United States and Spain, may be reviewed by the Arbitrators, who shall make each award in any such case as they shall deem just. No judgment of a Spanish tribunal disallowing the affirmation of a party that he is a citizen of the United States shall prevent the Arbitrators from hearing a reclamation presented in behalf of said party by the United States Government. Nevertheless, in any case heard by the Arbitrators, the Spanish Government may traverse the allegation of American citizenship and thereupon competent and sufficient proof thereof will be required. The Commission having recognized the quality of American citizens in the claimants, they will acquire the

⁴ TS 325, *ante*, p. 516.

rights accorded to them by the present stipulations as such citizens. And it is further agreed that the Arbitrators shall not have jurisdiction of any reclamation made in behalf of a native-born Spanish subject naturalized in the United States if it shall appear that, the same subject matter having been adjudicated by a competent tribunal in Cuba and the claimant, having appeared therein, either in person or by his duly appointed attorney and being required by the laws of Spain to make a declaration of his nationality, failed to declare that he was a citizen of the United States; in such case and for the purposes of this arbitration, it shall be deemed and taken that the claimant, by his own default, had renounced his allegiance to the United States. And it is further agreed that the Arbitrators shall not have jurisdiction of any demands growing out of contracts.

6. The expenses of the arbitration will be defrayed by a percentage to be added to the amount awarded. The compensation of the Arbitrators and the Umpire shall not exceed three thousand dollars each; the same allowance shall be made to each of the two advocates representing respectively the two Governments; and the Arbitrators may employ a Secretary at a compensation not exceeding the sum of five dollars a day for every day actually and necessarily given to the business of the Arbitration.

7. The two Governments will accept the awards made in the several cases submitted to the said Arbitration as final and conclusive, and will give full effect to the same in good faith and as soon as possible.⁵

I avail myself of the opportunity to renew to Your Excellency the assurances of my most distinguished consideration.

D. E. SICKLES

HIS EXCELLENCY
THE MINISTER OF STATE.

The Minister of State to the American Minister

[TRANSLATION]

MINISTRY OF STATE
MADRID, 12 February 1871

SIR:

I have had the honor to receive the Note you were pleased to address to me under date of yesterday, communicating to me the definitive record of the Memorandum in reference to the manner of arranging the settlement of the reclamations of citizens of the United States consequent upon the insurrection in the Island of Cuba, and as, in drawing up the document, you have

⁵ For additional articles, see agreements of Feb. 23, 1881 (TS 331-1), *post*, p. 557, and May 6, 1882 (TS 332), *post*, p. 560.

kindly incorporated the slight modifications I proposed to you, for greater clearness and precision, in my note of yesterday in answer to yours of the 7th, I take pleasure in informing you that I entirely concur in the contents of the said Memorandum.

I improve this occasion to renew to you the assurances of my most distinguished consideration.

CRISTINO MARTOS

THE MINISTER PLENIPOTENTIARY OF THE
UNITED STATES OF AMERICA.